IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO No.245 of 2007.
Judgment Reserved on:7.11.2007
Date of decision:13.11.2007.

Madhuri Devi ….**Appellant**

Versus

Goverdhan Singh Chandel ….**Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant: **Mr.T.S. Chauhan, Advocate.**

For the Respondent: **Mr.M.S. Guleria, Advocate.**

Dev Darshan Sud,J.

The appellant has approached this Court against the order of the learned District Judge, passed in Civil Miscellaneous Petition No.99 of 2007 in Civil Appeal No.4 of 2007, rejecting her prayer for interim direction in an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, prohibiting and restraining the respondent from raising any construction on Khasra Nos.811/2, 816 and 811/1 in New Bilasapur Township. The appellant, who was the plaintiff, had filed a suit in the learned trial Court praying inter alia for a decree of declaration to the effect that she

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

is lessee of plot No.23/4 in Sector-2, New Bilaspur Township, Bilaspur and for permanent injunction restraining from interfering in and encroaching on the land/path in Khasra No.811/2, 816 and 811/1 in Sector 2, New Bilaspur Township. The learned trial Court, dismissed the suit of the plaintiff and while deciding issue No.1, which was to the effect as to whether the defendant-respondent was raising construction on plot on Khasra No.811/2 and 816, which were undisputedly Government land, held that no encroachment was found. For reaching these findings, the trial Court relied upon the report of the Local Commissioner.

Being aggrieved by the judgment of the trial Court, the appellant-plaintiff preferred an appeal in the Court of learned District Judge, Bilsapur, praying for interim directions for prohibiting and restraining respondent No.1 from raising any construction on the two Khasra Numbers as noticed hereinbefore. The learned appellate Court dismissed the application holding that interlocutory order by way of temporary injunction cannot be granted as a matter of course. On the material on the record, the learned Court holds that the respondent is not threatening to raise construction on these two Khasra numbers. Surprisingly, it also holds that in case interim directions are issued, the respondent is not likely to suffer than the appellant.

I have heard learned counsel for the parties and have gone through the record of the case.

I do not find that the learned appellate Court has considered the matter judiciously. It is not the law that litigant must wait till the last moment till his rights are actually infringed for petitioning the court for interlocutory or final relief. Having found that both these Khasra Nos.811/1 and 811/2 are government land, how the Court reached the conclusion that the respondent is likely to suffer more in case the prayer of the appellant is allowed that no encroachment should be made in these two Khasra numbers is unclear. Surely, the Court was alive to the situation that this land was government land. By declining prayer of the appellant, the appellate Court was indirectly giving a right to the respondent to encroach upon the government land.

One more fact need be noticed and that is the State, HPPWD and the Municipal Committee, Bilaspur, who were respondents, have not been heard in this application. Surely, government land was involved, which aspect is not disputed before me, the State and the Municipal Committee were the best parties to have answered the charge of the appellant that the respondent was threatening to interfere on these two Khasra numbers. The learned appellate Court has also not considered the evidence adduced before the trial Court that such an attempt has been made in the past by the respondent.

In the totality of the circumstances, the judgment and order of the learned District Judge is quashed and set aside and direction is issued that both the parties shall maintain status quo qua the nature and possession of the land as it prevails today. The stand of the respondent before the learned appellate Court is that no construction/obstruction is being made on this land. In these circumstances, it is directed that neither party shall alter the nature of the land as it exists today. This appeal is accordingly allowed. There shall be no order as to costs. Records of the Court below be sent back immediately.

November 13, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**